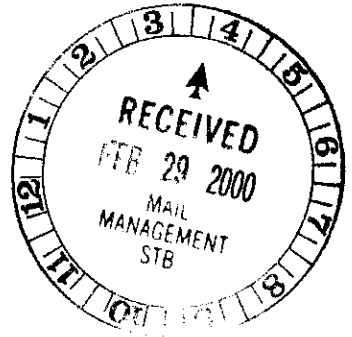




DONELAN CLEARY  
WOOD & MASER, P.C.

197280

February 29, 2000



Via Hand Delivery

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

Office of the Secretary

FEB 29 2000

Part of  
Public Record

Re: STB Ex Parte No. 582, *Public Views on Major Rail Consolidations*

Dear Secretary Williams:

Please find enclosed for filing in the above-referenced proceeding an executed original and ten (10) copies of the Comments of Institute of Scrap Recycling Industries, Inc. Also enclosed is a 3.5-inch diskette containing a WordPerfect 7.0 formatted copy of this filing. An extra copy of the filing is enclosed for stamping and return to our office.

Should you have any questions concerning this filing, please do not hesitate to contact the undersigned. Thank you for your cooperation and assistance in this matter.

Respectfully submitted,

John K. Maser III

*Enclosures*

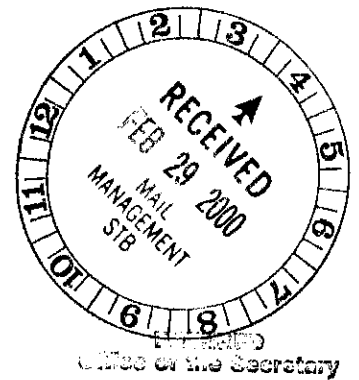
ATTORNEYS AND COUNSELORS AT LAW

1100 New York Avenue, N.W., Suite 750, Washington, D.C. 20005-3934, Tel: 202-371-9500, Fax: 202-371-0900

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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STB Ex Parte No. 582

*Public Views on Major Rail Consolidations  
And  
The Present and Future Structure of the North American Railroad Industry*

**FEB 29 2000**

**Part of  
Public Record**

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**COMMENTS OF  
THE INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.**

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The Institute of Scrap Recycling Industries, Inc. ("ISRI") hereby submits these comments concerning the issues of major rail consolidations and the present and future structure of the North American railroad industry. ISRI appreciates the opportunity to present its views to the Board concerning these important subjects.

IDENTITY AND INTENT OF ISRI

ISRI is the North American trade association representing approximately 1,300 member companies that process, broker, and consume recyclable materials, including ferrous and nonferrous metals, paper, plastic, glass, rubber and textiles. Suppliers of equipment and services to this industry complete ISRI's membership. ISRI members are substantial users of the nation's railroads for both receipt of inbound and especially the shipment of outbound commodities.

The North American scrap recycling industry is heavily dependent upon rail service for its outbound transportation because it generally does not have economically viable alternatives. Scrap processing facilities tend to be located near the sources of scrap that make up their raw material. Therefore, much of the inbound scrap generally arrives in trucks from nearby areas and usually in small increments. In contrast, once the scrap is processed to specification-grade

material it is usually transported by rail. This is due to a number of inter-related factors. The principal markets for processed scrap are refineries, smelters, foundries, steel mills and paper mills, which require large volumes of scrap and often are located significant distances from the processing facilities. Since truck transport becomes uneconomical at longer distances and many consumers prefer, or their facilities require, rail deliveries, rail transport in many instances is the only viable economic option unless both the origin and destination points are on or near navigable waterways. Trucks also are constrained by their smaller capacity, highway weight limits, and the fact that they must be loaded and unloaded quickly to address the presence of truck operators. Also scrap metal, due to the nature of the material and its various processed forms, which include sheets, bales and shredded, cannot be efficiently or effectively loaded, transported and unloaded in the majority of commercial motor carrier vehicles. In addition, this material, due to its heavy and bulky nature, cannot be easily stored for long periods.

Transportation costs account for a disproportionate share of the final value of processed scrap. Transportation costs can vary from 12% to 40% of the final product value. Industry-wide, freight is often the single largest regular expense for scrap processors other than the cost of raw materials. Therefore, the scrap recycling industry is very dependent on rail transport that provides timely delivery of appropriate equipment for loading and timely transport of carloads of scrap material to consuming facilities. Unfortunately, notwithstanding the crucial importance that railroad transport plays in the movement of scrap material, the railroads have not provided on a consistent and reliable basis the timely delivery of needed equipment and the timely transport of outbound scrap materials.

ISRI's COMMENTS CONCERNING MAJOR  
RAILROAD CONSOLIDATIONS AND INDUSTRY STRUCTURE

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In this important proceeding, the shipping public is being asked to comment on the issue of major rail consolidations. Several such consolidations have taken place over the past few years. In each case the participating railroads indicated that the consolidation at issue would greatly increase the level of service to all shippers, including the scrap recycling industry. In most cases, unfortunately, the level of service has actually decreased. In the recent acquisition of Conrail by the Norfolk Southern ("NS") and CSXT railroads the service provided to many scrap processors can be best described by one word- "nightmarish". Stories abound of rail cars loaded with scrap disappearing for months at a time. Full loads of scrap delivered to fulfill requests for empty cars. Loads interchanged between railroads when the routing did not call for such. Cars of scrap going on a multi-state journey of several months when the origin and destination points were either in the same state or two adjacent states. And the list goes on.

At the same time that service has significantly decreased, the railroads have commenced increasing the rates they charge for this service. On January 1, 2000 the Norfolk Southern railroad instituted a 5% across-the-board rate increase for the transportation of recyclable commodities. To date the CSXT, Union Pacific and Burlington Northern-Santa Fe railroads have advised of their intention to also increase their rates. The reasons given include increasing costs for fuel and labor and plans to capitalize on shortages of freight cars and freight yards. The reason never given for such increases is "We earned it."

In ISRI's view, each of these consolidations was motivated, not by the call of shippers, but by the desire of the participating railroads for expansion into potentially lucrative territories. Prior to its acquisition Conrail provided "adequate" service to scrap recyclers in several states. Yet Conrail was acquired by NS and CSXT railroads because of the desire of the NS and CSXT

to acquire direct access to lucrative markets that neither could directly access before. Is such a premise valid? No one discounts the validity of the desire for increased profit as a significant motivating factor in the American business culture. It is a driving motive that helps to account for the tremendous strides American business has made throughout its history.

Yet virtually every American business venture has to face one crucial test in its quest for increasing profits. That test is its ability to effectively compete for customers. The difference between an American business success story and one of failure has often been the ability of a business to provide the best product or service that is in demand by consumers. Hard work and the desire to do whatever was reasonably necessary to satisfy a customer has been the bedrock of many American business success stories.

The scrap recycling industry has had many of these success stories. Many of today's successful scrap recycling companies were founded by individuals willing to handle and process material that no one else wanted. Push carts and horse drawn carriages, often piloted by newly arrived immigrants with a desire to make a new life for their families, formed the rudimentary basis for a scrap collection and delivery system. Ingenuity, hard work and the desire to do whatever was necessary pushed these recycling pioneers to develop and implement ever improving methods for the safe recycling of scrap material. Many of these facilities are operated today by the descendants of those pioneers. The facilities, processing equipment and transportation modes used today are quite different from those employed by their company's founders. Yet one common business element is shared across generations-only through the ability to effectively compete will a company remain profitable for another year much less another generation.

Many of today's American railroad companies shared a similar entrepreneurial beginning as the scrap recycling industry. Yet from similar beginnings these two industries have diverged towards different paths. The scrap recycling industry still keeps competition as the foundation of its success. However today's railroads, especially the large Class I railroads, have championed a new concept for success. Use mergers or acquisitions to gain access to lucrative markets. Then use the current system of federal laws and regulations to prohibit the introduction of any new competition. The majority of ISRI's members who have access to rail service have access to only one rail carrier. The railroad with sole access rights to these companies can block competition from any other railroad, whether it is through prohibiting direct access to a company's facility, or refusal to share access such as through control of switching points or via a bottleneck segment. Regardless of how it is done the results are the same-rail competition is prohibited.

Many ISRI members report that service from the railroad with access rights to their facility has steadily decreased for a number of years. The greatest decline in service has occurred following each of the recent rail mergers or acquisitions. While the merger or acquisition itself was the initial reason for the poor service because of track capacity, technology and operational problems, it is not the root of the problem.

The problem is the lack of need for the railroads to effectively compete for the ability to serve. The theme of the complaints we hear from our members is very consistent. These include, "the railroad's priority is selling traffic moves, not servicing accounts," "they know they have us captive, so they just don't care how they treat us," and "they know they get paid regardless of how bad the service is." Yet the most telling of all phrases as to the current lack of drive to compete comes from one of the rail carriers involved in a recent acquisition. It was in a

recent letter from the Norfolk Southern in response to a claim filed by an ISRI member following several consecutive months of poor service and delays that resulted in lost revenue for the member. In the letter Norfolk Southern's National Account Manager for Metals responded to the claim by writing, "...tonnage that moves for (this) account via NS does so with no service guarantees. Based on this, we respectfully deny the above claims."

Service is not just equivalent to a contractual guarantee. Service is a commitment to do what is best for the customer. It is a dedication to provide the customer, whether or not an existing account or a new one, a large customer or a mom and pop operation, with the product and assistance that is both requested and expected. The motivation for service is the knowledge that a lack of service could easily shift the business to a competitor willing to provide the needed and expected service. Clearly, this motivation is lacking especially for the railroads that have sole access to the majority of scrap recycling companies.

What is needed is to return to the scrap recycling industry, as well as to all American industries, the ability to seek competitive companies from which to request and expect competitive rail service. What does this mean? All United States rail lines currently owned and operated by common rail carriers should be open for use by any entity which demonstrates the ability to safely move rail traffic. Therefore, a scrap recycler, frustrated at the inability to receive adequate rail service from the Class I railroad that is the only rail carrier with access to the shipping facility, could turn to a number of alternative carriers willing to step in and provide rail service. Our proposal builds upon the incisive decision of the Board in Ex Parte No. 628 that was effective on January 27, 1999. In this decision the Board provides for "procedures for obtaining temporary alternative rail service when there has been a substantial measurable

deterioration or other demonstrated inadequacy in rail service provided by the incumbent carrier."

We applaud the Board for taking this step. It definitely was a departure from numerous past decisions by this Board and its predecessor, the Interstate Commerce Commission. A problem, however, with this decision is that it continues to require that a shipper petition and successfully argue the need for service. In essence it continues to provide a venue at which a rail carrier can attempt to obtain government protection against losing business. This raises the question, does the United States government need to continue to protect the business interests of a class of companies where, for example, two of its members can jointly invest \$10 billion to acquire and operate the assets of another company?

We understand that the improvement and upkeep on these rail lines are funded by the rail carriers which own them. Therefore, the Board should be responsible for setting reasonable fees that another carrier would pay for use of these lines if the involved carriers are unable to resolve the matter themselves. However, any entity certified by the Board or other governmental entity, such as the Federal Railroad Administration, as able to safely provide rail service should be allowed to provide any such service upon request by a shipper. The shipper would not be burdened with the requirement to prove the need for direct and immediate competition nor the responsibility to rebut arguments by the incumbent carrier that would attempt to block the commencement of directly competitive service.

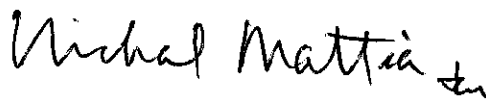
Would the rail shippers of this country not benefit from such competition? Has such competition not improved and diversified the service available from package shippers and telephone companies? Early results seem to validate that such a concept has shown promise in the delivery of electrical power. If we are concerned that the trend towards consolidation may be



causing an ever decreasing availability of competition then the means to correct this is not by limiting the ability of railroads to consolidate but by removing the roadblocks to the injection of new competition.

We ask that the Surface Transportation Board move to inject into our nation's rail system the ability for open entrepreneurial competition. We ask that the Board work with the Congress to change the laws that currently may block such competition. And if this concept is attacked by the railroads we ask that the Congress and the Board look at the United States economic system, the most effective and prosperous economic system in the world, and realize that it was primarily built upon entrepreneurial competition, not government protected monopolies. What we are asking is that the blockade to such competition be removed from our nation's rail transport system.

Respectfully submitted,

A handwritten signature in black ink that reads "Michael Mattia" followed by a small flourish.

Michael Mattia  
Director-Risk Management  
INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.  
1325 G Street, NW  
Washington, DC 20005

February 29, 2000